

Senate Daily Reader

Wednesday, January 20, 1999

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State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0205

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB20** - 1/19/99

Introduced by: The Committee on Judiciary at the request of the Department of Corrections

1 FOR AN ACT ENTITLED, An Act to provide for court-ordered restitution at the time a
2 defendant is sentenced to the state penitentiary.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 23A-28-3 be amended to read as follows:

5 23A-28-3. If the sentencing court orders the defendant to the county jail, suspended
6 imposition of sentence, suspended sentence, or probation, the court may require as a condition
7 that the defendant, in cooperation with the court services officer assigned to the defendant,
8 promptly prepare a plan of restitution, including the name and address of each victim, a specific
9 amount of restitution to each victim and a schedule of restitution payments. If the defendant is
10 presently unable to make any restitution, but there is a reasonable possibility that the defendant
11 may be able to do so at some time during his the defendant's probation ~~or parole~~ period, the plan
12 of restitution shall also state the conditions under which or the event after which the defendant
13 will make restitution. If the defendant believes that no person suffered pecuniary damages as a
14 result of the defendant's criminal activities, the defendant shall so state. If the defendant contests
15 the amount of restitution recommended by the court services officer, the defendant is entitled to
16 a hearing at which the court shall determine the amount. If the sentencing court orders the

1 defendant to the state penitentiary and does not suspend the sentence, ~~the Board of Pardons and~~
2 ~~Paroles shall require as a condition of parole that the defendant, in cooperation with the~~
3 ~~executive director of the Board of Pardons and Paroles, prepare the plan of restitution as~~
4 ~~described in this section~~ the court shall set forth in the judgment the names and specific amount
5 of restitution owed each victim. The Department of Corrections shall establish the collection
6 schedule for court-ordered restitution while the defendant is in the penitentiary and on parole.
7 The Board of Pardons and Paroles shall require, as a condition of parole, that the defendant pay
8 restitution ordered by the court.

9 Section 2. That § 23A-28-5 be amended to read as follows:

10 23A-28-5. The court services officer when assisting the defendant in preparing the plan of
11 restitution and the court before approving or modifying the plan of restitution shall consider the
12 physical and mental health and condition of the defendant, the defendant's age, the defendant's
13 education, the defendant's employment circumstances, the defendant's potential for employment
14 and vocational training, the defendant's family circumstances, the defendant's financial condition,
15 the number of victims, the pecuniary damages of each victim, what plan of restitution will most
16 effectively aid the rehabilitation of the defendant, and each victim, and such other factors as may
17 be appropriate.

18 ~~— For a defendant serving a sentence in the state penitentiary the board of pardons and paroles~~
19 ~~shall consider these factors when preparing the plan of restitution.~~

20 Section 3. That § 23A-28-6 be amended to read as follows:

21 23A-28-6. The court services officer shall provide each known victim a copy of the court's
22 order approving or modifying the plan of restitution for any defendant not serving his sentence
23 in the state penitentiary. The executive director of the board of pardons and paroles shall provide
24 each known victim a copy of the plan schedule of restitution ~~approved or modified by the board~~
25 ~~of pardons and paroles~~ for each inmate placed on parole. If the victim is not satisfied with the

- 1 approved or modified plan of restitution, the victim's exclusive remedy is a civil action against
- 2 the defendant, which, if successful, may include attorney's fees.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Judiciary. S.J. 18

3 1/15/99 Scheduled for Committee hearing on this date.

4 1/16/99 Judiciary Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 59

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0317

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB21** - 1/19/99

Introduced by: The Committee on Judiciary at the request of the Department of Corrections

1 FOR AN ACT ENTITLED, An Act to specify the responsible party for inmate transportation
2 to court-ordered hearings.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 4. That § 19-5-5 be amended to read as follows:

5 19-5-5. A person confined in any prison ~~in this state~~, facility, or program under the control
6 of the Department of Corrections pursuant to § 1-15-1.4, may, by order of any court, be required
7 to be produced for oral examination, by the Department of Corrections, in the county where ~~he~~
8 the person is imprisoned.

9 Section 5. That § 19-5-6 be amended to read as follows:

10 19-5-6. Except as provided by § 19-5-5, the examination of a person confined in any prison
11 ~~in this state must~~, facility, or program under the control of the Department of Corrections
12 pursuant to § 1-15-1.4, shall be by deposition.

13 While a ~~prisoner's~~ an inmate's deposition is being taken, ~~he~~ the inmate shall remain in the
14 custody of the officer ~~having him~~ in charge of the inmate, who and the officer in charge shall
15 afford reasonable facilities for the taking of the deposition. If the court orders that an inmate be
16 present for oral examination in a county other than where the inmate is housed, the county where

1 the action is venued is responsible for the transport of the inmate.

2 Section 6. That chapter 1-15 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 If an inmate confined in any prison, facility, or program under the control of the Department
5 of Corrections pursuant to § 1-15-1.4, is ordered by the court to be present at a criminal
6 proceeding or a sentence modification hearing pursuant to § 23A-27-19, the prosecuting county
7 shall transport the inmate to the proceeding or hearing. If an inmate is ordered by a court to be
8 present at a hearing under § 26-7A-122, the county where the hearing is held shall transport the
9 inmate to the hearing. However, if the proceeding is for a criminal offense committed while the
10 inmate was in a Department of Corrections institution, the Department of Corrections shall
11 transport the inmate to the proceeding.

12 Section 7. That chapter 1-15 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 In the event a county or the Department of Corrections fails to transport an inmate as
15 required in this Act, the county or the department may be billed for the cost of the transport and
16 are responsible for the payment thereof.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Judiciary. S.J. 19

3 1/15/99 Scheduled for Committee hearing on this date.

4 1/16/99 Judiciary Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 60

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0325

SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB22** - 1/19/99

Introduced by: The Committee on Health and Human Services at the request of the Department of Health

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to vital records.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 8. That § 34-25-15 be amended to read as follows:

4 34-25-15. In cases of legitimation, the department, upon receipt of proof of the marriage of
5 the parents after the birth of the child together with an affidavit of paternity signed by both
6 parents of the child, shall prepare a new certificate of birth in the new name of the legitimated
7 child.

8 Within ten days after the filing of an affidavit of acknowledgment of paternity, signed by both
9 putative parents who are not married, the department shall add the name of the father to the
10 certificate of birth if paternity is not shown on the record. Upon request of the parents, the
11 surname of the child may be changed to that of the father or a combination of mother's and
12 father's surnames, in which case the department shall prepare a new birth certificate. A change
13 in paternity, which is already shown on a birth certificate, may be made only upon receipt of a
14 court order determining paternity.

15 Upon receipt of a court order or affidavits determining the paternity of a child pursuant to

§ 34- 25-13.1, the department shall prepare a new certificate of birth. Each applicant for a new birth record shall submit a five dollar fee to the department for the preparation and filing of the record.

Section 9. That § 34-25-36 be amended to read as follows:

34-25-36. A funeral director, embalmer, or other person who removes from the place of death or transports or finally disposes of a dead body or fetus, in addition to filing any certificate or other form required by this chapter, shall keep a record which shall identify the body, and shall on or before the fifth day of each month report to the ~~state department of health~~ all human bodies handled during the preceding month on a form provided for that purpose. If no death occurs in any given month which requires a funeral director to keep a record pursuant to this section, the funeral director shall report that fact on a form provided for that purpose.

Section 10. That § 34-25-43 be amended to read as follows:

34-25-43. The ~~state department of health~~ shall prepare, print, and supply to all registrars, all blanks and forms used in registering, recording, and preserving the reports and returns, or in otherwise carrying out the purposes of this chapter. No blanks or forms ~~shall~~ may be used other than those supplied by the ~~state department of health~~ or exact electronic replicas approved by the department.

Section 11. That § 34-25-46 be amended to read as follows:

34-25-46. The local registrar shall sign, date, and number consecutively the certificates of ~~birth, death, and burial or removal permits filed in his office, and sign thereon his name as registrar, together with the date of filing in his office. He shall make a copy of each birth and death certificate filed by him, in the form prescribed by the state department of health. He~~ at the county office. The local registrar shall transmit weekly to the state department monthly or more frequently when directed to do so, the original certificates of birth and death and shall maintain a copy of all death certificates filed in the county. If no vital event occurred death certificates

- 1 were filed in any ~~month, he~~ week, the local registrar shall report that fact on a form provided for
- 2 that purpose.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Health and Human Services. S.J. 19

3 1/16/99 Scheduled for Committee hearing on this date.

4 1/16/99 Health and Human Services Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 61

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

771C0073

SENATE LOCAL GOVERNMENT COMMITTEE ENGROSSED NO. **SB32** - 1/19/99

Introduced by: The Committee on Local Government at the request of the State Board of
Elections

1 FOR AN ACT ENTITLED, An Act to revise certain procedures concerning the contents, data,
2 and form of a municipal initiative and referendum and to provide certain rule-making
3 authority.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 12. That § 9-20-2 be amended to read as follows:

6 9-20-2. A petition to propose an ordinance or resolution shall be filed with the finance
7 officer, containing in proper form the proposed ordinance or resolution. It shall be signed by the
8 required number of the legal resident registered voters of the municipality, ~~each voter adding to~~
9 ~~his signature his.~~ The signer or circulator shall add the signer's residence ~~mailing~~ address,
10 ~~including his street and house number, if any, county of voter registration,~~ and date of signing.
11 ~~The petition shall be verified as required for a referendum petition.~~ The signer's post office box
12 number may be given in lieu of a street address if the signer lives within a municipality of the
13 second or third class. No signature on a petition is valid if signed more than six months prior to
14 the filing of the petitions.

15 Section 13. That § 9-20-8 be amended to read as follows:

1 9-20-8. The referendum petition shall be signed by at least five percent of the legal voters
2 residing in the municipality. The percentage shall be based on the whole number of voters of the
3 municipality as determined by the "precinct registration lists" or the "district registration lists"
4 prepared by the county auditor from the master registration list in conformity to law as of the
5 time of the filing of the petition. The signer or circulator shall add the signer's residence ~~mailing~~
6 address, county of voter registration, and date of signing. The signer's post office box number
7 may be given in lieu of a street address if the signer lives within a municipality of the second or
8 third class.

9 Section 14. That § 9-20-9 be amended to read as follows:

10 9-20-9. ~~Such referendum petition shall be verified as a petition to initiate a law except that~~
11 ~~the person verifying the same shall state that he and each of the persons~~ Any person circulating
12 an initiative or referendum petition shall be a resident and qualified voter of the municipality and
13 shall verify that each person signing the same petition is a resident and qualified voter of the
14 municipality, naming it. The State Board of Elections shall promulgate rules pursuant to chapter
15 1-26 prescribing the format for an initiative and referendum petition and its verification.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Local Government. S.J. 21

3 1/16/99 Scheduled for Committee hearing on this date.

4 1/16/99 Local Government Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 58

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

771C0074

SENATE LOCAL GOVERNMENT COMMITTEE ENGROSSED NO. **SB33** - 1/19/99

Introduced by: The Committee on Local Government at the request of the State Board of
Elections

1 FOR AN ACT ENTITLED, An Act to create a procedure for challenging certain nominating,
2 initiative, or referendum petitions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 15. Within five business days after a nominating, initiative, or referendum petition
5 is filed with the appropriate officer, any interested person who has researched the signatures
6 contained on the petition may file an affidavit stating that the petition contains deficiencies as to
7 the number of signatures from persons who are eligible to sign the petition. The affidavit shall
8 include an itemized listing of the specific deficiencies in question.

9 Section 16. The appropriate officer shall verify the information contained in the affidavit filed
10 pursuant to section 1 of this Act and make a written declaration regarding the validity of the
11 signatures in question. The officer shall verify that each person was a registered voter at the time
12 the person signed the petition by using the registration documents on file in the office of the
13 county auditor.

14 Section 17. The person in charge of the election shall immediately notify by certified mail any
15 candidate whose nominating petition or any primary sponsor whose referendum or initiative

1 petition is rejected and declared invalid in accordance with this Act.

2 Section 18. If a person fails to challenge a petition pursuant to section 1 of this Act, it does
3 not deny that person any other legal remedy to challenge the filing of a nominating, initiative, or
4 referendum petition.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Local Government. S.J. 21

3 1/16/99 Scheduled for Committee hearing on this date.

4 1/16/99 Local Government Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 58

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

771C0075

SENATE LOCAL GOVERNMENT COMMITTEE ENGROSSED NO. **SB34** - 1/19/99

Introduced by: The Committee on Local Government at the request of the State Board of Elections

1 FOR AN ACT ENTITLED, An Act to revise certain requirements concerning the certificate for
2 nomination and to provide certain rule-making authority.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 19. That § 12-7-1 be amended to read as follows:

5 12-7-1. Any candidate for nonjudicial public office who is not nominated by a primary
6 election may be nominated by filing with the secretary of state or county auditor as prescribed
7 by § 12-6-4, not prior to ~~May~~ January first at eight a.m. and not later than the ~~first Tuesday in~~
8 ~~August~~ third Tuesday in June at five p.m. prior to the election, a certificate of nomination, ~~in the~~
9 ~~form prescribed by the State Board of Elections and~~ which shall ~~otherwise~~ be executed as
10 provided in chapter 12-6. If the certificate of nomination is mailed by registered mail by the ~~first~~
11 ~~Tuesday of August~~ third Tuesday in June at five p.m. prior to the election, it ~~shall be considered~~
12 ~~filed~~ is timely submitted. The certificate shall specify that an independent candidate for
13 nonjudicial public office shall designate the name of any national political party, or political party
14 organized pursuant to chapter 12-5, with which the candidate has an affiliation. If no affiliation
15 exists, the candidate shall ~~designate "independent."~~ be designated by the term, no party. It shall

1 be signed by ~~not less than one percent of the~~ registered voters ~~residing~~ within the district or
2 political subdivision in and for which the officers are to be elected, ~~based upon~~. The number of
3 signatures required may not be less than one percent of the total combined vote cast for
4 Governor at the last certified gubernatorial election within the district or political subdivision.
5 An independent candidate for Governor shall certify ~~his~~ the candidate's selection for lieutenant
6 governor to the secretary of state prior to circulation of ~~his~~ the candidate's nominating petition.
7 An independent candidate for President shall file a declaration of candidacy and a certification
8 of ~~his~~ the candidate's selection for vice president with the secretary of state prior to circulation
9 of ~~his~~ the candidate's nominating petitions. The candidate and the candidate's selection for
10 lieutenant governor or vice president shall sign the certification before it is filed. The State Board
11 of Elections shall promulgate rules pursuant to chapter 1-26 prescribing the forms for the
12 certificate of nomination and the certification for lieutenant governor and vice president.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Local Government. S.J. 21

3 1/16/99 Scheduled for Committee hearing on this date.

4 1/16/99 Local Government Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 58

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

771C0076

SENATE LOCAL GOVERNMENT COMMITTEE ENGROSSED NO. **SB35** - 1/19/99

Introduced by: The Committee on Local Government at the request of the State Board of
Elections

1 FOR AN ACT ENTITLED, An Act to revise the requirements for updating the master
2 registration list.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 20. That § 12-4-18 be amended to read as follows:

5 12-4-18. The ~~State~~ Department of Health, in conjunction with preparation of abstracts of
6 vital statistics records made pursuant to § 34-25-46, shall prepare an abstract for the county
7 auditor, listing names and addresses of voters who have been residents of that county who have
8 died.

9 The register of deeds shall deliver a list of the names and addresses of all persons who have
10 died and whose death certificates were filed in ~~his~~ the office during the previous month to the
11 county auditor by the tenth day of each month.

12 The clerk of courts shall within fifteen days after the close of each month prepare and deliver
13 to the auditor an abstract from ~~his~~ the records of the names of persons declared mentally
14 incompetent, convicted and sentenced for a felony in the preceding month. The clerk of courts
15 shall give ~~such~~ notice in all felony cases including those sentenced to probation. The notice shall

1 be sent to the county auditor of the county in which the person declared incompetent or
2 convicted resides. ~~A convicted felon who has had his rights suspended under this section may~~
3 ~~reinstate them by filing the proper release documents with the county auditor.~~ The county auditor
4 shall ~~make appropriate changes upon~~ remove from the master registration list the names of
5 persons identified in accordance with the information provided pursuant to this section.

6 Section 21. That chapter 12-4 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 If requested by the county auditor, a convicted felon shall provide the proper release
9 documents to the county auditor when registering to vote. The release documents shall certify
10 that the convicted felon's entire sentence has been completed.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Local Government. S.J. 21

3 1/16/99 Scheduled for Committee hearing on this date.

4 1/16/99 Local Government Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 59

5 1/16/99 Local Government Place on Consent Calendar.

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0239

SENATE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. SB56 -
1/19/99

Introduced by: The Committee on Health and Human Services at the request of the Department
of Human Services

1 FOR AN ACT ENTITLED, An Act to revise the definition of a qualified mental health
2 professional.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 22. That § 27A-1-3 be amended to read as follows:

5 27A-1-3. As used in this title, the term, "qualified mental health professional", means a
6 physician licensed pursuant to chapter 36-4 or a member of one of the professions listed in this
7 section who has received a competency-based endorsement as a qualified mental health
8 professional from the Department of Human Services. The following persons are eligible to apply
9 for the endorsement:

- 10 (1) A psychologist who is licensed to practice psychology in South Dakota;
- 11 (2) A psychiatric nurse with a master's degree from an accredited education program and
12 two years of supervised clinical experience in a mental health setting;
- 13 (3) A certified social worker with a master's degree from an accredited training program
14 and two years of supervised clinical experience in a mental health setting;
- 15 (4) A person who has a master's degree in psychology from an accredited program and

1 two years of supervised clinical mental health experience and who meets the provision
2 of subdivision 36-27A-2(2); ~~or~~

3 (5) A counselor who is certified under chapter 36-32 as a licensed professional counselor
4 -- mental health;

5 (6) A physician's assistant who is certified under chapter 36-4A as a certified physician's
6 assistant and has two years of supervised clinical experience in a mental health setting;
7 or

8 (7) A nurse practitioner who is certified under chapter 36-9A as a nurse practitioner and
9 has two years of supervised clinical experience in a mental health setting.

10 Except as provided in § 36-4-20, each qualified mental health professional shall meet all
11 licensing and certification requirements promulgated by the State of South Dakota for persons
12 engaged in private practice of the same profession in South Dakota. However, the private
13 practice licensure requirement for persons referred to in ~~subdivision~~ subdivisions (3) and (4) does
14 not apply to those employed by the State of South Dakota or mental health centers.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Health and Human Services. S.J. 25

3 1/16/99 Scheduled for Committee hearing on this date.

4 1/16/99 Health and Human Services Do Pass Amended, Passed, AYES 5, NAYS 2. S.J. 61